

(6) The need to maintain impartiality between private litigants in cases where a substantial government interest is not implicated;

(7) Whether compliance would have an adverse effect on performance by the Department of its mission and duties; and

(8) The need to avoid involving the Department in controversial issues not related to its mission.

(b) Among those demands and requests in response to which compliance will not ordinarily be authorized are those with respect to which, *inter alia*, any of the following factors exist:

(1) Compliance would violate a statute or a rule of procedure;

(2) Compliance would violate a specific regulation or executive order;

(3) Compliance would reveal information properly classified in the interest of national security;

(4) Compliance would reveal confidential commercial or financial information or trade secrets without the owner's consent;

(5) Compliance would reveal the internal deliberative processes of the Executive Branch; or

(6) Compliance would potentially impede or prejudice an on-going law enforcement investigation.

§ 172.9 Prohibition on providing expert or opinion testimony.

(a) Except as provided in this section, and subject to 5 CFR 2635.805, Department employees shall not provide opin-

ion or expert testimony based upon information which they acquired in the scope and performance of their official Department duties, except on behalf of the United States or a party represented by the Department of Justice.

(b) Upon a showing by the requestor of exceptional need or unique circumstances and that the anticipated testimony will not be adverse to the interests of the United States, the appropriate Department official designated in § 172.4 may, consistent with 5 CFR 2635.805, in their discretion and with the concurrence of the Office of the Legal Adviser, grant special, written authorization for Department employees to appear and testify as expert witnesses at no expense to the United States.

(c) If, despite the final determination of the appropriate Department official designated in § 172.4, a court of competent jurisdiction or other appropriate authority orders the appearance and expert or opinion testimony of a Department employee, such employee shall immediately inform the Office of the Legal Adviser of such order. If the Office of the Legal Adviser determines that no further legal review of or challenge to the court's order will be made, the Department employee shall comply with the order. If so directed by the Office of the Legal Adviser, however, the employee shall respectfully decline to testify. *See United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951).